```
 1   IN THE UNITED STATES DISTRICT COURT

 2       FOR THE EASTERN DISTRICT OF TEXAS

 3                    MARSHALL DIVISION

 4                      - - -

 5   PATTY BEALL, MATTHEW MAXWELL,    )
     DAVID GRAVELY, TALINA MCELHANY,  )
 6   KELLY HAMPTON, CASEY BROWN,      )
     JASON BONNER, KEVIN TULLOS,      )
 7   ANTHONY DODD, ILENE MEYERS,      )
     TOM O'HAVER, JOY BIBLES, DON     )
 8   LOCCHI and MELISSA PASTOR,       )
     Individually and on behalf of    )
 9   all others similarly situated;   )
                                      )
10        Plaintiffs                  )
                                      )
11   vs.                              )  2:08-cv-422-TJW
                                      )
12   TYLER TECHNOLOGIES, INC., and    )
     EDP ENTERPRISES, INC.            )
13                                    )
             Defendants.              )
14                                    )
     ----------------------------------

15

16                    DEPOSITION OF

17              CHRISTOPHER HEPBURN

18                PORTLAND, MAINE

19                AUGUST 18, 2010

20

21

     ATKINSON-BAKER, INC.
22   COURT REPORTERS
     (800) 288-3376
23   www.depo.com

24   REPORTED BY:   Cheryl C. Pieske, RMR

25   FILE NO.:      A40636E
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14   Plaintiff,   )

15   vs.   ) 2:08-cv-422 TJW

16   TYLER TECHNOLOGIES, INC., and,   )

17   EDP ENTERPRISES, INC.,   )

18   Defendants.   )

19   ---------------------------------

20

21   Deposition of CHRISTOPHER HEPBURN, taken on

22   behalf of Plaintiff, at Congress Street, Portland, Maine,

23   commencing at 8:32 a.m., Wednesday, August 18, 2010, before

24   Cheryl C. Pieske, RMR, Court Reporter and Notary

25   Public.

1	A. I wouldn't say that. That is -- questions and	08:58:47
2	answers are one example. There could be others, off the	08:58:51
3	top of my head, of what I had conducted.	08:58:54
4	Q. Okay. Like what?	08:58:57
5	A. Another example would be their banking. Did	08:58:58
6	they want positive pay, did I have to contact the bank,	08:59:07
7	obtain bank files. So that would be something that I	08:59:11
8.	would have done on behalf of the client, but it wouldn't	08:59:14
9	be a question-and-answer session --	08:59:17
10	Q. Uh-hmm.	08:59:18
11	A. -- in that type of analysis.	08:59:19
12	Q. Was that part of your normal duties, or was	08:59:21
13	that something that was -- just came up on occasion?	08:59:23
14	MR. McKEEBY: Object to the form of the question.	08:59:26
15	You can answer.	08:59:32
16	A. Every single client is different. Every single	08:59:33
17	implementation is different. There is no -- there is no	08:59:38
18	cookie cutter approach. So it's hard for me to answer	08:59:42
19	that because at Client A, I may have dealt with the	08:59:45
20	banking items. At Client B I may not have. So it's -- I	08:59:50
21	think the example is just that. It's an example but not	08:59:57
22	meant to imply that that's -- that there was a set -- a	09:00:01
23	set model that was repeatable.	09:00:08
24	Q. There would be things that would come up	09:00:11
25	repetitively though, correct?	09:00:13

1	A. Certainly.	09:00:14
2	Q. What types of things would come up	09:00:18
3	repetitively?	09:00:20
4	A. In a financial application and payroll	09:00:20
5	application and tax and utilities, which is what MUNIS	09:00:30
6	is, you would have a chart of accounts, you would have	09:00:34
7	vendors, you would have employees, you would have	09:00:38
8	customers that you were going to bill. You'd have those	09:00:40
9	repetitive situations that you would need to establish in	09:00:44
10	the software.	09:00:49
11	Q. And the software didn't change, correct, unless	09:00:49
12	there was a new version or, you know, something like that	09:00:53
13	happened?	09:00:56
14	A. I would say it changed a lot.	09:00:56
15	Q. Okay. How did it change?	09:00:58
16	A. There are -- the developers are showing up to	09:00:59
17	work every day. They're constantly changing the	09:01:06
18	software. That's their job. So I would expect at client	09:01:09
19	A to work with a version of software that was different	09:01:14
20	from client B.	09:01:17
21	Q. Uh-hmm.	09:01:17
22	A. I guess I was just -- just used to that.	09:01:18
23	Q. And the versions that would come in and change,	09:01:21
24	would they be updates?	09:01:24
25	A. You could have two paths. An update is	09:01:25

1	A. That depends on many factors.	09:45:59
2	Q. Like what?	09:46:05
3	A. Does the individual implementor have the	09:46:06
4	expertise to do that, does the project manager want to	09:46:11
5	delegate that function to the implementor, how many	09:46:17
6	projects is the project manager working with, how many	09:46:25
7	implementors that project manager has reporting to him or	09:46:30
8	her relative to the number of projects, meaning are they	09:46:33
9	forced to delegate more often than not.	09:46:37
10	Q. So it may be an aspect of managerial style or	09:46:40
11	practice?	09:46:44
12	A. One -- that would be one potential reason.	09:46:44
13	Q. Uh-hmm. Anything else?	09:46:47
14	A. The ones I mentioned are what come to my mind.	09:46:51
15	Q. Okay. How else do you believe the job duties	09:46:54
16	or functions of the implementation specialist at ERP are	09:47:01
17	different from other divisions?	09:47:07
18	A. There are numerous examples. I will provide	09:47:08
19	another.	09:47:20
20	Q. Let me stop you and withdraw the question, and	09:47:22
21	maybe it will be easier to do it this way. I'm trying to	09:47:25
22	get things to be as brief as possible.	09:47:28
23	A. Okay.	09:47:30
24	Q. How are they similar to the job functions	09:47:30
25	performed by implementation specialists in other	09:47:36

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1	divisions?	09:47:38
2	A. How are they similar? Can you provide more	09:47:41
3	detail as to what --	09:48:10
4	Q. Well, let's use what you have described as far	09:48:11
5	as what you did as a template. Maybe that's easier.	09:48:17
6	You've already testified that the ERP implementation	09:48:23
7	specialists may or may not analyze the current business	09:48:27
8	practices of the client. Correct?	09:48:30
9	A. At ERP?	09:48:31
10	Q. At ERP. Correct?	09:48:33
11	A. Correct.	09:48:35
12	Q. And they may or may not determine the	09:48:36
13	defendant's -- the client's, excuse me, business	09:48:40
14	practices or what they want to change also, correct, that	09:48:43
15	question and answer?	09:48:46
16	A. At ERP.	09:48:47
17	Q. At ERP. Do the implementation specialists	09:48:48
18	configure the software to adhere to the client's needs at	09:48:52
19	ERP?	09:48:57
20	A. Not every implementor.	09:48:57
21	Q. Okay. Which ones do, which ones don't?	09:49:03
22	A. Based on experience.	09:49:07
23	Q. Uh-hmm. And what level? Where is the cutoff?	09:49:10
24	A. Well, the -- experience is not something that's	09:49:13
25	clear-cut in terms of -- you might think it's years,	09:49:22

1	Well, it's not. It's states that you work in. Every	09:49:27
2	state is different. Do you have the experience within a	09:49:32
3	particular state. The application that you're working	09:49:34
4	in, do you have experience within the particular	09:49:39
5	application. You might be an expert of payroll within	09:49:41
6	Massachusetts. You are not going to configure payroll	09:49:47
7	for New York. It's too different.	09:49:50
8	Q. But I guess my question is do they configure	09:49:54
9	software to adhere to the client's needs within the area	09:49:59
10	that they're assigned? Is that something that's part of	09:50:03
11	their normal duties?	09:50:06
12	A. If they have the experience to do that and the	09:50:07
13	project manager delegates that --	09:50:13
14	Q. Okay.	09:50:16
15	A. -- within the ERP.	09:50:16
16	Q. Okay. So, once again, it may be up to the	09:50:18
17	managerial style of the project manager?	09:50:21
18	A. As one factor to determine that.	09:50:24
19	Q. Okay. And the other factor would be, I	09:50:28
20	presume, the experience level?	09:50:30
21	A. As I've described, experience being product	09:50:32
22	knowledge, state knowledge, years of service.	09:50:37
23	Q. Okay. And do the implementation specialists or	09:50:41
24	consultants at ERP review that configuration with the	09:50:46
25	client and get the client acceptance?	09:50:50

1	A. Not all.	09:50:54
2	Q. Once again, we're back to managerial style?	09:50:59
3	A. Style and experience.	09:51:02
4	Q. Do they review the conversion files and load	09:51:04
5	conversion files?	09:51:07
6	A. Not all.	09:51:08
7	Q. Okay. So we're back to managerial style and	09:51:09
8	experience?	09:51:12
9	A. Correct.	09:51:13
10	Q. Okay. Do they educate the senior staff and the	09:51:13
11	user staff or train them?	09:51:17
12	A. That would be an area that would be more	09:51:19
13	predominant across -- across all implementors, meaning	09:51:24
14	that our less experienced implementors do transfer	09:51:29
15	knowledge, our more experienced do transfer knowledge,	09:51:35
16	and our project managers within ERP transfer knowledge.	09:51:37
17	So in that area the implementors would -- that particular	09:51:40
18	function would apply to the implementation position.	09:51:44
19	Q. Okay. When you say the implementation	09:51:48
20	position, are you referring to as it pertains to	09:51:51
21	implementors across all of the different divisions?	09:51:54
22	A. No. I was still referring to just ERP in that	09:51:57
23	example.	09:52:00
24	Q. Okay. So are you saying that that's the	09:52:00
25	primary job duty of the implementors at ERP is to educate	09:52:02

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1    that we haven't discussed?                              10:04:09

2         A.    Not that I can recall right now.             10:04:10

3         Q.    Okay.  Now, let's move on to Eden.           10:04:17

4         A.    Sure.                                        10:04:22

5         Q.    What do the implementation specialists and   10:04:23

6    consultants -- what are their functions at Eden?        10:04:26

7         A.    The organizational structure at Eden is      10:04:29

8    different than MUNIS.  The project manager is not a     10:04:33

9    product expert, which means more responsibility falls on 10:04:38

10   the implementation staff to perform all -- virtually all 10:04:47

11   product-related items to get the client live.           10:04:55

12        Q.    Okay.  And what do they have to do?          10:04:59

13        A.    They would -- they would perform the analysis, 10:05:03

14   the to-be model definition, the configuration, marrying 10:05:14

15   of the to-be model to the configuration, and work with  10:05:19

16   the client to execute that, and then the added          10:05:25

17   responsibility to educate the project manager, who is not 10:05:29

18   a product expert, on where the project is relative to   10:05:32

19   milestones.                                             10:05:37

20        Q.    Okay.  And would they do training as well?   10:05:38

21        A.    That would be one component of their job.    10:05:43

22        Q.    Okay.  And then do they assist in the -- or do 10:05:45

23   they do the -- receive the client acceptance, review the 10:05:49

24   conversion files and load conversion files?             10:05:55

25        A.    That would be also part of their job.        10:05:57
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 1          Q.    And do they assist in the go-live in the ways      10:05:59

 2    we've discussed before?                                        10:06:02

 3          A.    That would also be part of their job.              10:06:03

 4          Q.    And do they assist in go-live support?             10:06:04

 5          A.    Correct.                                           10:06:07

 6          Q.    Okay.  And based upon what you have told me, it    10:06:09

 7    sounds like it's your testimony that the implementation        10:06:13

 8    specialists at Eden perform predominantly the kind of          10:06:16

 9    tasks that you performed when you were an implementation       10:06:20

10    specialist; is that correct?                                   10:06:25

11          A.    The -- predominantly, I would say generally       10:06:34

12    they perform similar tasks.  The difference is just            10:06:39

13    organizational structure where when I was at MUNIS, I had      10:06:46

14    a project manager who was a product expert who was             10:06:52

15    engaged in the project.  At Eden, the project manager is       10:06:59

16    not a product expert, meaning that their implementation        10:07:03

17    consultants have a higher degree of responsibility than I      10:07:09

18    had.                                                           10:07:13

19          Q.    Okay.  And is that how it is now or how it has     10:07:13

20    always been?                                                   10:07:17

21          A.    They have -- at Eden or MUNIS?                     10:07:18

22          Q.    Both places.                                       10:07:21

23          A.    MUNIS has -- MUNIS has -- for my 17 years, all     10:07:22

24    but 1 1/2 years has been organized in the project             10:07:37

25    manager/implementor combination with a project manager as      10:07:40
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1	time.	10:09:57
2	MR. McKEEBY: This is at INCODE?	10:09:57
3	THE DEPONENT: At INCODE dealing with -- and when we	10:09:59
4	get to it, Courts, and I can describe more later.	10:10:03
5	A. So that provides a level of, I would say,	10:10:10
6	management, getting all of your applications lined up to	10:10:21
7	go live at the same time where the Eden, the MUNIS, an	10:10:27
8	even INCODE financials can be staggered. You could do	10:10:31
9	financials one day, payroll one day. You could stagger	10:10:36
10	it out. But they have a different burden because you	10:10:39
11	want all of your courts and your public safety up and	10:10:44
12	running at one fell swoop so that when the sheriff pulls	10:10:49
13	someone over and they have an outstanding warrant for	10:10:53
14	them, that sheriff needs to know that or that sheriff	10:10:55
15	could be in trouble. So they have to -- the	10:10:59
16	implementation consultants because they don't have a	10:11:02
17	product -- project manager who is a product expert have	10:11:04
18	that added burden of managing multi-tasking that the Eden	10:11:08
19	folks and MUNIS folks don't have.	10:11:13
20	Q. And so I might understand correctly, because it	10:11:15
21	needs to go live at the same time, it's really a timing	10:11:18
22	issue?	10:11:21
23	A. It's -- it's -- I'd call it a project	10:11:22
24	management juggling issue.	10:11:25
25	Q. Uh-hmm.	10:11:28

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1	A And, remember, the product -- the project	10:11:29
2	manager is not a product expert. They're less -- a less	10:11:30
3	talented staff member than, say, their MUNIS	10:11:37
4	counterparts.	10:11:40
5	Q. I know that that's the term you're giving it,	10:11:41
6	but how is it to you considered a project management	10:11:43
7	issue?	10:11:47
8	A. The project -- can you clarify your question?	10:11:49
9	Q. I'm just going off of your answer. I am sorry.	10:11:56
10	But you said you know you would call it a project	10:11:58
11	management burden, I believe --	10:12:00
12	A. Uh-hmm.	10:12:00
13	Q. -- if I recall your testimony correctly, and	10:12:06
14	I'm just curious as to how it is a project management	10:12:09
15	burden?	10:12:13
16	A. The implementation consultant is leading the	10:12:13
17	project at Eden and at INCODE. They are the product	10:12:18
18	expert. They're engaged with the client, marrying the	10:12:23
19	product and the project, and they're reporting back to	10:12:29
20	someone, the project manager, who is a scheduling master.	10:12:33
21	Q. So is it -- is it your testimony that there are	10:12:37
22	project managers at Eden and INCODE, but their only	10:12:43
23	function is scheduling?	10:12:49
24	A. It would not be my testimony that their only	10:12:52
25	function is scheduling. I would say that they are	10:12:56

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 1   less -- their job duties and functions are less -- I'm        10:12:58

 2   looking for the word.  What would come less -- less than      10:13:09

 3   their MUNIS counterpart where their MUNIS counterpart is      10:13:12

 4   a product expert and the client expects to talk product,     10:13:16

 5   with their MUNIS project manager expect to be able to        10:13:20

 6   talk configuration, expects to be able to talk about why     10:13:24

 7   decisions were made.                                         10:13:28

 8        At Eden and INCODE the project manager is not going     10:13:29

 9   to engage in those discussions with the client.  They're     10:13:32

10   going to engage in your project is 50 percent complete,      10:13:34

11   based upon the number of days we have delivered.  That's     10:13:41

12   it.  The client is going to have to talk to the              10:13:43

13   implementation staff member at Eden and INCODE to find       10:13:47

14   out where they are relative to their project in terms of     10:13:51

15   knowledge transfer, policies, procedures, to-be model.       10:13:56

16   It's all the implementation consultant's advice and          10:14:00

17   counsel.                                                     10:14:03

18        Q.    What are the job duties of the project manager,   10:14:03

19   then, at Eden and INCODE?                                    10:14:06

20        A.    They schedule the bull pen.  When I say bull      10:14:07

21   pen, all the implementors go into a calendar, if you         10:14:14

22   will, and the project manager schedules implementors to      10:14:23

23   go to client sites; and then when the implementor goes to    10:14:28

24   the client site, the implementor then runs that project.     10:14:34

25   So the project manager is scheduling, reviewing, again,      10:14:36
```

1	Q. Okay. And at MUNIS they do it zero percent of	10:16:16
2	the time; is that correct?	10:16:24
3	A. That is not correct. I think we discussed	10:16:25
4	earlier it's the project manager's discretion whether the	10:16:27
5	project manager would like to do it or they wanted to	10:16:31
6	delegate that task. So it would depend.	10:16:35
7	Q. Okay. And if at Eden and INCODE it's	10:16:38
8	100 percent of the time that they do that, what percent	10:16:43
9	of the time would they spend doing the consulting with	10:16:47
10	the client versus their other tasks, training and, you	10:16:51
11	know, assisting with go-live and that type of thing?	10:16:54
12	A. I want to -- I don't like the -- I want to back	10:16:56
13	up. I don't like the term 100 percent. That's -- that's	10:17:06
14	too narrow a definition to say that someone at Eden and	10:17:09
15	INCODE. Some other staff member could work with a client	10:17:11
16	to do analysis.	10:17:15
17	Q. Like who?	10:17:18
18	A. They might -- it could be someone in the	10:17:18
19	support department that helps out on occasion. If there	10:17:23
20	was -- if I didn't have anyone scheduled to go to a	10:17:26
21	particular client site, we could ask a manager in support	10:17:29
22	or someone who had product knowledge. So to say it's	10:17:33
23	100 percent I think is too narrow, but predominantly	10:17:36
24	within those organizations the implementation specialists	10:17:39
25	are the ones engaging with clients for the analysis; but	10:17:44

1	Q. Okay. Explain that to me.	11:25:54
2	A. Well, I --	11:25:54
3	Q. I don't think I understand your answer.	11:25:58
4	A. Well, I -- at Eagle, they might have an	11:26:00
5	internal comfort with allowing their implementors to	11:26:03
6	provide advice and counsel. A better example is	11:26:13
7	Appraisal and Tax. Appraisal and Tax, the seniority of	11:26:19
8	their implementation consultants averages around	11:26:26
9	15 years. They hire very experienced people to come on	11:26:29
10	board. The nature of implementing Appraisal and Tax is	11:26:33
11	extremely unique within Tyler because the audience you're	11:26:38
12	implementing are well educated in the science of property	11:26:42
13	assessment. We have to be well educated in the science	11:26:47
14	of property assessment, which means that we hire a very	11:26:51
15	experienced, very knowledgeable person onto our team; and	11:26:56
16	as such, the implementation consultants at Appraisal and	11:27:02
17	Tax are, as part of their job, consultants, much like the	11:27:08
18	MUNIS consulting team; but they're not differentiated	11:27:13
19	within Tyler as that.	11:27:17
20	Within Courts and Justice, it's expected that when	11:27:18
21	I'm sitting next to someone who has been serving as the	11:27:21
22	local county assessor for 20 years that he or she and I	11:27:24
23	can engage in the science of assessment as relates to our	11:27:29
24	software and they expect our recommendations. Contrast	11:27:33
25	that to the implementor who's going to be training on	11:27:37

```
 1    requisition entry who may have 5 months experience with    11:27:41

 2    Tyler, and someone asks that individual whether or not      11:27:46

 3    they should allow the end user to exceed the budget.        11:27:50

 4    That -- that implementor is not qualified to make that      11:27:54

 5    assessment.  They're going to be asked that question, but   11:27:57

 6    they're not qualified to make that assessment.  It's just   11:27:59

 7    two different -- two different jobs.                        11:28:02

 8         Q.    Okay.  So outside of what you've talked about,   11:28:03

 9    is there any other discretion and judgments that you       11:28:07

10    claim is associated with the analyzing the business        11:28:10

11    practices and receiving information about changes they     11:28:14

12    want to do in the business practice?                       11:28:17

13         A.    Well, I want to clarify.  I think I -- I want    11:28:19

14    to be on record as saying that the job of analyzing        11:28:22

15    customer data is all about discretion and independent      11:28:27

16    judgment, and I gave a particular example.  The fact that  11:28:30

17    I gave one or two examples doesn't mean that there's only  11:28:33

18    one or two times.  It's all the time there's discretion    11:28:36

19    and independent judgment in my opinion.                    11:28:39

20         Q.    Once again, in your opinion you're basically    11:28:41

21    talking about the fact that you are gathering information  11:28:43

22    from the client about how they would like the software to  11:28:45

23    work within the particular confines of their business and  11:28:49

24    what changes they'd like to make maybe from how their      11:28:55

25    previous software worked, and you receive that             11:28:59
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1	isolation, you've -- you're looking for trouble. So the	11:40:09
2	convert question comes up in the general analysis of how	11:40:15
3	we're going to define the to-be model, and it's part of	11:40:19
4	that iterative process. Do I convert payroll? Well, how	11:40:24
5	about we say yes on the -- no on the employee data but	11:40:29
6	yes on the W-2 history data. So -- and now I have got to	11:40:33
7	carry those two discussions all the way through. So when	11:40:37
8	I'm talking about reporting and quarterly 941 reports,	11:40:41
9	there is an impact all the way downstream on whether or	11:40:44
10	not I converted that W-2 information. So it's -- to talk	11:40:47
11	about conversions in isolation is -- I'm not programmed	11:40:51
12	to talk about that.	11:40:57
13	Q. The implementation specialist doesn't make	11:40:58
14	those decisions, you know, on their own, I mean, assuming	11:41:02
15	they make them at all. We've talked about that many do	11:41:08
16	not. But assuming that any do, it certainly would not be	11:41:11
17	done in isolation in the sense of I'm going to come in,	11:41:15
18	I'm going to analyze what you're doing, I am going to	11:41:18
19	decide what you need to do and how I need to get it done	11:41:21
20	through this new software?	11:41:24
21	A. Well, that's incorrect from the standpoint that	11:41:27
22	at MUNIS they're not alone because you have your project	11:41:31
23	manager to fall back on, but in Eden and INCODE, you're	11:41:35
24	it. I mean, you're the implementation consultant. Your	11:41:38
25	project manager is not going to assist you in the	11:41:41

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1	convert-not convert discussion. So you're it. You're it	11:41:43
2	for Eden, INCODE, anyone else who uses the bull-pen	11:41:47
3	approach. You've got to decide with that client. You're	11:41:51
4	not in isolation because the client is making that	11:41:53
5	decision.	11:41:56
6	Q. That's what I'm talking about. The client is	11:41:56
7	making the decision ultimately?	11:41:57
8	MR. McKEEBY: On convert or not convert?	11:42:00
9	MS. RAY: On -- on what information to convert or	11:42:03
10	not convert.	11:42:04
11	A. Well, I think -- I'm sorry. I didn't let you	11:42:07
12	finish.	11:42:09
13	BY MS. RAY:	11:42:09
14	Q. I mean, are they not?	11:42:09
15	A. The client would just as soon convert	11:42:10
16	everything because it means less work for them. It's the	11:42:17
17	implementation consultant's job to give them the pros and	11:42:20
18	cons of their decisions that they choose to make, meaning	11:42:23
19	I could -- an implementation consultant could tell their	11:42:28
20	client if we convert, you will have more work to do than	11:42:31
21	if we don't convert; and then can that implementation	11:42:34
22	consultant articulate with certainty and conviction why	11:42:39
23	converting data means more work for the client when it	11:42:49
24	would clearly simplistically seem to anyone that	11:42:52
25	converting data would mean less work for a client. And	11:42:56

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CERTIFICATE

        I, Cheryl C. Pieske, RMR, Notary Public in and.

for the State of Maine, hereby certify that on AUGUST 18,

2010, personally appeared before me the within-named

deponent who was sworn to testify the truth, the whole

truth and nothing but the truth in the aforementioned

cause of action; and the foregoing, as reduced to

computer type, is a true and accurate record of the

evidence as taken by me by means of stenotype.

I further certify that I am a disinterested person in the

event or outcome of the aforementioned cause.

IN WITNESS WHEREOF, I subscribe my hand at Waldo, Maine,

this 30th day of August, 2010.

        _____

        Cheryl C. Pieske, RMR

        Notary Public

        My Commission Expires June 25, 2016.